

United States District Court
Western District of Texas
Waco Division

Raul Balderas, Felipa Balderas, And Natalie
Balderas,

Plaintiffs,

v.

Eric Thomas Heguy, Eleazar Luna Garcia,
United States of America, Dean Walker
Henry, Jr., And Alfredo Gomez,

Defendants.

Civil Action No.: W-22-CV-829

Defendant United States of America's Notice of Removal

Defendant UNITED STATES OF AMERICA hereby files its Notice of Removal with this Court, removing the above-entitled action now pending as Cause No. 2021-2713-4 in the 170th Judicial District Court of McLennan County, Texas, and in support of this Notice of Removal states as follows:

I. Grounds for Removal

1. On October 11, 2021, Anita Washington was served as a Defendant with Plaintiffs' Original Petition in Cause No. 2021-2713-4 in the 170th Judicial District Court of McLennan County, Texas. A copy of Plaintiffs' Original Petition is attached hereto as Exhibit 1. Trial has not been set or held.

2. Attached as Exhibit 2 is a certification that Defendant Anita Washington was acting within the course and scope of her federal employment at all relevant times as alleged in the Plaintiffs' Original Petition.¹ Because Plaintiffs allege they were injured by a federal employee acting within the course and scope of her employment with the federal government, Plaintiffs must

¹ The State Court action named Anita Washington as a Defendant. Upon removal, the United States of America is being substituted for Anita Washington pursuant to 28 U.S.C. § 2679(d)(1).

proceed with this action, if at all, under the Federal Tort Claims Act (“FTCA”).

3. This Notice of Removal is made pursuant to the provisions of 28 U.S.C. § 2679(d)(2) (any civil action commenced against a federal employee, once certified as acting within the scope of her employment at the time of the incident, shall be removed at any time prior to trial).

II. Compliance with Removal Procedures

4. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal shall be filed with the 170th Judicial District Court, McLennan County, Texas.

5. Pursuant to 28 U.S.C. § 1446(a) and Local Rule CV-3(a), Defendant attaches the following (these documents are hereby incorporated by reference in all respects):

Exhibit 3: Civil Cover Sheet;

Exhibit 4: Supplemental Civil Cover Sheet;

Exhibit 5: Copies of all process, pleadings, orders, and other documents contained in the State Court’s file.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1442(a) because the United States District Court for the Western District of Texas, Waco Division, embraces McLennan County, Texas, where the state court action was filed and is currently pending. Specifically, Plaintiffs filed suit in the 170th Judicial District Court in McLennan County, Cause No. 2021-2713-4.

7. Pursuant to the provisions of 28 U.S.C. § 1446(d), a Notice of Filing Notice of Removal will be filed with the 170th Judicial District Court, McLennan County, Texas.

WHEREFORE, Defendant United States of America provides this Notice that the action now pending in the 170th Judicial District Court, McLennan County, Texas, against Defendant Anita Washington, et al., is removed to this Court. Following removal, Fletcher, Farley, Shipman & Salinas will assume representation for the Defendant.

Respectfully submitted,

ASHLEY C. HOFF
UNITED STATES ATTORNEY

/s/ Faith Johnson Lowry _____

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